

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed;

(3) Deny applications for interlocutory Commission review of a ruling of the Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by §10.101(a) of the rules; and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge; and the ruling does not concern the suspension of, or failure to suspend, an attorney from participation in a particular proceeding, or the denial of intervention or limited participation;

(4) Deny any application for interlocutory review in a proceeding if it is not filed in accordance with §10.101(b) of these rules;

(5) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge, where such appeal is not filed and perfected in accordance with §10.102 of these rules;

(6) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, part 10 of these rules;

(7) Stay, for a limited period of time not to exceed ten working days, any order of the Commission entered in a proceeding subject to these rules;

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the General Counsel or his designee believes it appropriate, he may submit the matter to the Commission for its consideration;

(c) Within seven (7) days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling.

[50 FR 33515, Aug. 20, 1985, as amended at 60 FR 54802, Oct. 26, 1995; 64 FR 43071, Aug. 9, 1999]

Subpart I—Restitution Orders

SOURCE: 63 FR 55795, Oct. 19, 1998, unless otherwise noted.

§ 10.110 Basis for issuance of restitution orders.

(a) *Appropriateness of restitution as a remedy.* In any proceeding in which an order requiring restitution may be entered, the Administrative Law Judge shall, as part of his or her initial decision, determine whether restitution is appropriate. In deciding whether restitution is appropriate, the Administrative Law Judge, in his or her discretion, may consider the degree of complexity likely to be involved in establishing claims, the likelihood that claimants can obtain compensation through their own efforts, the ability of the respondent to pay claimants damages that his or her violations have caused, the availability of resources to administer restitution and any other matters that justice may require.

(b) *Restitution order.* If the Administrative Law Judge determines that restitution is an appropriate remedy in a proceeding, he or she shall issue an order specifying the following:

(1) All violations that form the basis for restitution;

(2) The particular persons, or class or classes of persons, who suffered damages proximately caused by each such violation;

(3) The method of calculating the amount of damages to be paid as restitution; and

(4) If then determinable, the amount of restitution the respondent shall be required to pay.

§ 10.111 Recommendation of procedure for implementing restitution.

Except as provided by §10.114, after such time as any order requiring restitution becomes effective (*i.e.*, becomes final and is not stayed), the Division of Enforcement shall petition the Commission for an order directing the Division to recommend to the Commission or, in the Commission's discretion, the Administrative Law Judge a procedure for implementing restitution. Each party that has been ordered to pay restitution shall be afforded an opportunity to review the Division of